



## Panel: Transnational Civil Litigation in U.S. Courts – The Fundamentals

Honorable John Koeltl, Honorable Victor Marrero, and John Fellas (Moderator)

### Discussion Outline

#### I. Introduction

- Overview: What is distinctive about transnational litigation?
- International disputes in U.S. courts -- litigation in the US involving foreign party or events that took place in a foreign country -- may raise issues of:
  - o service of process
    - Fed. R. Civ. P. 4(f)
    - Hague Service Convention
    - Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694 (1988)
  - o personal jurisdiction over foreign defendants
    - International Shoe Co. v. State of Washington, 326 U.S. 310 (1945)
    - Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984)
    - World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)
    - Asahi Metal Indus. Co. Ltd. v. Superior Court of Calif., 480 U.S. 102 (1987)
  - o taking of evidence abroad for use in foreign litigation
  - o extraterritorial application of US laws

- International disputes in foreign courts -- litigation abroad, but may impact US courts where:
  - o the assistance of the US court is sought for the taking of evidence located in the US for use in the foreign litigation
  - o a US court is asked to recognize a judgment rendered by a foreign court
  - o a US court is asked to recognize an international arbitration award
    - Parallel Proceedings -- this may give rise to issues of:
      - o forum non conveniens (does not technically require parallel proceedings, but does require the availability of an adequate alternative forum with jurisdiction)
      - o parallel proceedings and comity
      - o anti-suit injunctions
        - See John Fellas, Strategy in International Litigation, Vol. 16, No. 3, International Quarterly, 433 (2004)

## II. Parallel Proceedings and Concurrent Jurisdiction in International Litigation

- Forum Non Conveniens
  - o Piper Aircraft Co. v. Reyno, 454 U.S. 235 (1981)
  - o In re Union Carbide Corp. Gas Plant Disaster, 809 F.2d 195 (2d Cir. 1987), cert. denied, 484 U.S. 871 (1987)
  - o PT United Can Company Ltd. v. Crown Cork and Seal Co., Inc., No. 96 Civ. 3669 (JGK), 1997 WL 31194 (S.D.N.Y. Jan. 28, 1997), aff'd, PT United Can Company Ltd. v. Crown Cork and Seal Co., Inc., 138 F.3d 65 (2d Cir. 1998)

- o United States Fidelity and Guaranty Co. v. Braspetro Oil Services Co., No. 97 Civ. 6124 (JGK), 1999 WL 307666 (S.D.N.Y. May 17, 1999), *aff'd*, United States Fidelity and Guaranty Co. v. Braspetro Oil Services Co., 199 F.3d 94 (2d Cir. 1999)
- o United States Fidelity and Guaranty Co. v. Petroleo Brasileiro Petrobras, No. 98 Civ. 3099 (JGK), 1999 WL 307642 (S.D.N.Y. May 17, 1999), *aff'd*, United States Fidelity and Guaranty Co. v. Braspetro Oil Services Co., 199 F.3d 94 (2d Cir. 1999)
- o Ilusorio v. Ilusorio, 103 F. Supp. 2d 672 (S.D.N.Y. 2000)
- o Iragorri v. United Techs. Corp., 274 F.3d 65, 71 (2d Cir. 2001)
- o Monegasque De Reassurances S.A.M. (Monde Re) v. Nak Naftogaz of Ukraine, 158 F.Supp. 2d 377 (S.D.N.Y. 2001), *aff'd*, *In re Arbitration between Monegasque De Reassurances S.A.M. v. Nak Naftogaz of Ukraine*, 311 F.3d 488 (2d Cir. 2002)
- o Victoriata.com, Inc. v. Colt Beverage Canada, 239 F. Supp. 2d 377 (S.D.N.Y. 2003)
- o Base Metal Trading S.A. v. Russian Aluminum, 253 F. Supp. 2d 681 (S.D.N.Y. 2003), *aff'd*, Base Metal Trading S.A. v. Russian Aluminum, 98 F. App'x 47 (2d Cir. 2004)
- o Concesionaria DHM S.A. v. International Finance Corporation, 307 F. Supp. 2d 553 (S.D.N.Y. 2004)
- o Corporacion TIM, S.A. v. Schumacher, 418 F. Supp. 2d 529 (S.D.N.Y. 2006)
- o Malaysia Int'l Shipping v. Sinochem Int'l Co., 436 F.3d 349, 361 (3rd Cir. 2006)

- Parallel Proceedings
  - o Turner Entertainment Co. v. Degeto Film GmbH, 25 F.3d 1512 (11th Cir. 1994)
  - o Posner v. Essex Inc. Co., 178 F.3d 1209 (11th Cir. 1999)
  - o AAR Int'l, Inc. v. Nimelias Enterprises, S.A., 250 F.3d 510 (7th Cir. 2001)
  - o Am. Cyanamid Co. v. Picaso-Anstalt, 741 F. Supp. 1150 (D.N.J. 1990)
  - o Dow Jones & Co., Inc. v. Harrods, Limited, 237 F. Supp. 2d 394 (2002), *aff'd*, Dow Jones & Co., Inc. v. Harrods, Limited, 346 F.3d 357 (2d Cir. 2003)
  
- Anti-suit Injunctions
  - International comity is “the recognition which one nation allows within its territory to the legislature, executive or judicial acts of another nation, having due regard to both the international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.” *Hilton v. Guyot*, 159 U.S. 113, 164 (1895).
  
- Conservative: Comity Standard (D.C., Second, Third and Sixth Circuits)
  - *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 926-27 (D.C. Cir. 1984); *China Trade and Dev. Corp. v. M.V. Choong Yong*, 837 F.2d 33 (2d Cir. 1987); *Gau Shan Co. v. Bankers Trust Co.*, 956 F.2d 1349 (6th Cir.

1992); *Compagnie Des Bauxites de Guinea v. Ins. Co. of N. America*, 651 F.2d 877 (3d Cir. 1981), cert. denied, 457 U.S. 1105 (1982); *Int'l Fashion Prods., B.V. v. Calvin Klein, Inc.*, 95 Civ. 0982 (JFK), 1995 WL 92321 (S.D.N.Y. March 7, 1995).

- Liberal: Vexatiousness Standard (Fifth, Seventh and Ninth Circuits)
  - *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 626-27 (5th Cir. 1996), cert. denied, 519 U.S. 821 (1996); *Allendale Mut. Ins. Co. v. Bull Data Sys., Inc.*, 10 F.3d 425 (7th Cir. 1993); *Seattle Totems Hockey Club, Inc. v. Nat'l Hockey League*, 652 F.2d 852 (9th Cir. 1981), cert. denied, 457 U.S. 1105 (1982).
- Middle Ground: Totality of the Circumstances Standard (First Circuit)
  - *Quaak v. Klynveld Peat Marwick Goerdeler Bedrijfsrevisoren*, 361 F.3d 11 (1st Cir. 2004).

### III. International Arbitration And U.S. Courts Treatise

- International Arbitration, by Honorable Victor Marrero

### IV. The Hague Choice of Courts Convention

- Hague Choice of Courts Convention